



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2022-0988]

RIN 1625-AA00

Safety Zone, Port Arthur Canal, Sabine, Pass, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of Port Arthur Canal adjacent to Golden Pass Liquefied Natural Gas (LNG) Facility in Sabine Pass, TX. This safety zone would be temporarily activated when high pressure testing of piping systems is occurring. This safety zone is necessary to protect persons and vessels from potential blast and fragmentation hazards associated with high pressure piping testing.

DATES: This temporary interim rule is effective from January 20, 2023, until December 31, 2024. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0988 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard;

telephone 409-719-5086, email scott.k.whalen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port, Marine Safety Unit Port Arthur
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Basis and Purpose, and Regulatory History

On December 8, 2022, the Coast Guard was provided information regarding high pressure testing of piping systems at Golden Pass LNG in Sabine Pass, TX, that will occur between January 2023 and December 2024. A minimum of 15 test events will occur over the course of 2 years. Engineers have calculated the size of the exclusion zones necessary to ensure the safety of personnel. These exclusion zones reach navigable waters of the U.S. The Coast Guard has determined that these exclusion zones are areas where a safety zone is appropriate to prevent persons and vessels from entering during potentially hazardous high pressure testing. The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this temporary interim rule because doing so would be impracticable. These safety zones must be in place by January 20, 2023, in order to protect persons and vessels from the potential blast and fragmentation hazards associated with high pressure testing of piping systems at Golden Pass LNG. We lack

sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

The Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the public interest because we must ensure the protection of persons and vessels from the potential hazards associated with high pressure testing of piping systems at Golden Pass LNG.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) has determined that potential hazards from high pressure testing of LNG piping systems is a safety concern for persons and vessels in the area of the testing. This rule is needed to protect persons and vessels from the hazards present during high pressure test of these piping systems.

IV. Discussion of the Rule

This temporary interim rule establishes three temporary safety zones from January 20, 2023, through December 31, 2024. Due to the varying degrees of hazard introduced by different test locations and pressures, the safety zones will have three separate exclusion areas: 1) Port Arthur Canal in the vicinity of Golden Pass LNG, shoreline to shoreline, between a western boundary of 093° 55' 44" N and an eastern boundary of 093° 54' 36" W; 2) Port Arthur Canal in the vicinity of Golden Pass LNG between a western boundary of 093° 55' 44" N and an eastern boundary of 093° 54' 36" W and

extending from the south/west shoreline to the near channel limits as charted; and 3) Golden Pass LNG ship mooring basin within the following boundaries: starting on the shoreline west of the mooring basin at position 29°45'57.9" N 093°55'39.6" W, thence northeast to 29°45'59.25" N 093°55'37.5" W, thence to position W, thence o the shoreline on the east side of the basin at position 29°45'50.7" N 093°55'17.0" W. Based on the test being performed, the least restrictive exclusion zone will be enforced.

The duration of safety zone enforcement will be limited to the duration of the test, generally 2 hours or less. During enforcement, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will inform the public of the activation and subsequent deactivation of the temporary safety zone through Broadcast Notice to Mariners and Vessel Traffic Service (VTS) Advisory.

V. Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This temporary interim rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and

entities impacted by the safety zone. This temporary interim safety zone affects approximately 750-yards of Port Arthur Canal in the vicinity of Golden Pass LNG. Most tests will permit vessel movements within the adjacent navigable channel. One or two tests may restrict vessel traffic for a period of not more than 2 hours. Mariners will be advised of the time of testing in advance via Broadcast Notice to Mariners and VTS Advisories.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to enter or transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of short duration intended to protect persons and vessels from potential hazards associated with high pressure testing of piping system at the Golden Pass LNG facility in Sabine Pass, TX. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0988 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0988 to read as follows:

§ 165.T08-0988 Safety Zone; Port Arthur Canal, Sabine, Pass, TX.

- (a) *Location.* (1) The following areas are safety zones:

- (i) Port Arthur Canal in the vicinity of Golden Pass Liquefied Natural Gas (LNG), shoreline to shoreline, between a western boundary of 093° 55' 44" N and an eastern boundary of 093° 54' 36" W;

- (ii) Port Arthur Canal in the vicinity of Golden Pass LNG between a western boundary of 093° 55' 44" N and an eastern boundary of 093° 54' 36" W and extending from the south/west shoreline to the near channel limits as charted; and

- (iii) Golden Pass LNG ship mooring basin within the following boundaries: starting on the shoreline west of the mooring basin at position 29°45'57.9" N 093°55'39.6" W, thence northeast to 29°45'59.25" N 093°55'37.5" W, thence to position W, thence to the shoreline on the east side of the basin at position 29°45'50.7" N 093°55'17.0" W. All coordinates based on North American Datum of 1983 (NAD83).

- (2) Based on the test being performed, the least restrictive exclusion zone will be enforced.

- (b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol officer, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port, Port Arthur, TX (COTP), in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact Vessel Traffic Service (VTS) Port Arthur on VHF channel 01A, or the COTP's on scene representative on VHF channel 13 or 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* The safety zone in paragraph (a) of this section is in effect from January 20, 2023, through December 31, 2024. This section will be subject to enforcement when high pressure tests are being conducted. Mariners will be informed of enforcement zone and enforcement periods by Broadcast Notice to Mariners, VTS Advisory, and the presence of enforcement vessels displaying flashing blue law enforcement lights.

Dated: January 3, 2023.

Molly A. Wike,
Captain, U.S. Coast Guard,
Captain of the Port, Marine Safety Unit Port Arthur.

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